

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

DIRECT DIAL
(202) 371-7230
DIRECT FAX
(202) 661-8270
EMAIL ADDRESS
ABUSH@SKADDEN.COM

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May 13, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Ex Parte Submission -- WT Docket No. 02-55,
Response of BearingPoint, Inc.

Dear Ms. Dortch:

BearingPoint, Inc. ("BearingPoint" or the "Company") takes this opportunity directly to address the assertions made by Preferred Communications Systems, Inc. ("Preferred") in its May 2nd letter to the Commission. In that letter, Preferred attempts to use BearingPoint's disclosures in a Form 8-K filing to raise a pretextual argument as to BearingPoint's ability to carry out its obligations as part of the Transition Administrator ("TA") team.¹ As demonstrated below, BearingPoint is fully capable of fulfilling its obligations in the 800 MHz reconfiguration in a fair, fast and efficient manner.

BearingPoint is one of the largest business consulting, systems integration and managed services firm in the world with over 16,000 employees worldwide. It is a leading provider of business and technology strategy, system design and managed services to over 2000 companies, government agencies and other organizations. The Company has an established track record and has successfully run

¹ BearingPoint has limited its response in this submission to those issues raised by Preferred Communications directly related to BearingPoint's 8-K filing. Preferred also raised certain technical issues related to the TA-sponsored database available on the TA website. The TA will address these technical concerns in a separate filing.

other similar large scale projects for the federal government and other state agencies. The Company's recent disclosures do not and should not suggest any negative conclusions regarding BearingPoint's performance record, or its ability to effectively and efficiently manage the 800 MHz reconfiguration.

First, BearingPoint's liquidity position is strong. Two days after its April 20th Form 8-K filing, BearingPoint announced that it had priced a \$200 million convertible debt offering.² On a pro forma basis, on March 31, 2005 BearingPoint had approximately \$400 million on its balance sheet.³ The proceeds from the convertible debt offering replaced an expiring line of credit and, coupled with additional financial measures BearingPoint is undertaking, provide funding for the measures BearingPoint intends to take this year to implement programs to fund growth initiatives, incent and retain its talented employees, and take the final steps necessary to correct its accounting issues. The successful completion of this debt offering is significant evidence of the capital markets' continued confidence in BearingPoint.⁴

Second, BearingPoint's disclosures of likely financial restatements do not impact its ability to perform work on the TA team. On March 18, 2005, BearingPoint filed a Form 8-K with the Securities and Exchange Commission ("SEC") in which it disclosed, among other things, that it may restate its financials for the fiscal years 2003 and the first three quarters of 2004. On April 20, 2005, BearingPoint disclosed that its Board of Directors concluded on April 19th that certain prior period financial statements should no longer be relied upon. In these disclosures, BearingPoint identified certain challenges it has faced with regard to a financial system it implemented beginning in April 2004. BearingPoint takes these accounting issues seriously and is committed to ensuring the accuracy of our past and future financials. Accordingly, the Company has devoted substantial resources to implementing manual procedures and data validation processes to evaluate and correct our financial records.

Furthermore, BearingPoint's disclosures regarding its financial reporting do not extend to its ability to carry out its obligations as a member of the TA team. BearingPoint, with the other members of the TA, has assembled a highly qualified project team, dedicated to the TA, that will review 800 MHz payments made by Nextel and provide the required reporting to the FCC pursuant to the 800 MHz Report and Order. The TA will not be relying upon BearingPoint's financial reporting systems or processes used to create the Company's external financial reports to monitor 800 MHz payments and provide reporting to the FCC. The financial books and records for the TA

² See, BearingPoint, Inc. Press Release, *dated* April 22, 2005.

³ BearingPoint, Inc. 8-K filed on December 22, 2004; January 6, 2005.

⁴ See, BearingPoint, Inc. Press Release, *dated* April 27, 2005.

will be maintained separately from BearingPoint's corporate books and records and the TA's financial reports will be audited annually by an independent external auditor.

Third, the SEC's ongoing informal investigation, disclosed in the April 20th 8-K filing, does not impact on BearingPoint's ability to perform its responsibilities in the 800 MHz reconfiguration, nor is it relevant to the Commission's consideration as to the BearingPoint's reliability or credibility as a member of the TA team. The Commission has long held that un-adjudicated non-FCC matters should be resolved by a court of proper jurisdiction or other appropriate governmental agency.⁵ "Non-FCC violations... should not be prejudged by [FCC] processes."⁶ Thus, the FCC does not typically give consideration to pending matters not involving FCC-related issues or alleged misconduct in making determination regarding an applicant or licensee's qualifications. The Commission should use the same reasoning here. The Commission should not give consideration to a pending non-FCC related matter, appropriately being addressed by another governmental body. To do so, as Preferred suggests, holding the 800 MHz proceeding in abeyance, would only create uncertainty, delay and a waste of the Commission's resources that would disserve the public interest.

BearingPoint continues to provide its clients with excellent service and is winning work in every market in which it operates. Indeed, client demand remains strong, the Company has recently recorded increased levels of utilization for clients around the world and it is actively hiring to meet the needs generated by that demand. These factors, coupled with BearingPoint's long standing and successful client relationship with the federal government should be proof positive that Preferred's speculations about the Company's ability to serve on the TA team are categorically unfounded.

BearingPoint is honored to have been selected for this critical project. The firm appreciates the importance of 800 MHz reconfiguration to all stakeholders, especially the public safety community and critical infrastructure industry. BearingPoint and the rest of the TA team have already made significant progress in preparation for the 800 MHz reconfiguration, including the establishment of its Regional Prioritization Plan

⁵ *In re General Motors Corporation and Hughes Electronics Corporation*, Memorandum Opinion and Order, MM Docket No. 03-124, 19 FCC Rcd 473, 487 (2004). See also, *Broadcast Licensing Character Qualifications*, 102 FCC 2d 1179 (1986), modified, 5 FCC Rcd 3252 (1990), recon granted in part, 6 FCC Rcd 3448 (1991), modified in part, 7 FCC Rcd 6564 (1992). The Commission has used its character policy in the broadcast area as guidance in resolving similar questions in other proceedings.

⁶ *General Motors*, at 487.

("RPP"), the creation of the TA organizational and operational structure, and the recent publication of guidelines for licensees participating in reconfiguration. As demonstrated by the development of the RPP, BearingPoint, with its team members, has developed a complex plan in a fair and non-discriminatory manner that has been approved by the FCC. BearingPoint believes that this is a good example of how our work benefits the public interest.

As of April 15, 2005, the TA began receiving and reviewing cost estimates and the reconfiguration process is currently on schedule to begin as planned on June 27, 2005. BearingPoint's internal issues have no impact on the quality of services and commitment of the BearingPoint TA team members. Moreover, the matter raised is unrelated to this proceeding and is appropriately being addressed by the SEC. For these reasons, the FCC should reject this effort by Preferred to delay implementation of the reconfiguration plan.

Very truly yours,



Antoinette Cook Bush
Counsel for BearingPoint, Inc.

cc: Michael Wilhelm (michael.wilhelm@fcc.gov)
Catherine W. Seidel (catherine.seidel@fcc.gov)
Roger Noel (roger.noel@fcc.gov)
Roberto Mussenden (roberto.mussenden@fcc.gov)
David Furth (david.furth@fcc.gov)
Peter Tenhula (peter.tenhula@fcc.gov)
Brian Marengo (brian.marengo@fcc.gov)
Elizabeth Lyle (elizabeth.lyle@fcc.gov)
Austin Schlick (austin.schlick@fcc.gov)
Sam Feder, LA (sam.feder@fcc.gov)
John Branscome (john.branscome@fcc.gov)
Paul Margie (paul.margie@fcc.gov)
Barry Ohlson (barry.ohlson@fcc.gov)
Robert M. Gurss (gurss@fhhlaw.com)
Christine M. Gill (cgill@mwe.com)
Jill M. Lyon (jill.lyon@utc.org)
Mark Crosby (mark.crosby@accessspectrum.com)
Robert B. Kelly (rkelly@ssd.com)